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Supreme Court of the United States

OCTOBER TERM, 1959

No. 862

INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO,

Appellant-Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Appellee-Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

IRVING ABRAMSON,
Counsel for Appellant,
19 West 44th Street,
New York City.

EVERETT E. LEWIS,
BURTON H. ZUCKERMAN,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1959

No.

INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO,

Appellant-Petitioner.

—against—

NATIONAL LABOR RELATIONS BOARD,

Appellee-Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Introduction

Appellant, Insurance Workers International Union, AFL-CIO, by Irving Abramson, Esq. prays that a writ of certiorari, issue to review the order of the United States Court of Appeals for the Third Circuit entered in the above case on January 19, 1960.

Opinion Below

The United States Court of Appeals for the Third Circuit dismissed the Appellant's petition for review of a final order of the National Labor Relations Board, for lack of jurisdiction. The order was without opinion and is unreported. The order was made and entered on January 19, 1960.

Jurisdiction

It is believed that jurisdiction of this appeal is conferred on the Supreme Court of the United States by 28 U. S. C., Section 1254(1).

Statutes, Federal Rules and Regulations

National Labor Relations Act, as amended, Sections 3(d), 10(a), (b), (f); 29 U. S. C. Secs. 153(d), p. 5314, 160(a), (b), p. 5320 and 160(f), p. 5321.

Administrative Procedure Act, Sections 5b, 6a; 5 U. S. C. Secs. 1004(b) and 1005(a), p. 413.

Rules and Regulations of the National Labor Relations Board, Series 7, Sections 101.9, 102.8, 102.15, 102.18, 102.19; 23 Fed. Reg. 3259.

Question Presented

1. The National Labor Relations Act, as amended, provides in Section 10(f) (29 U. S. C. 160(f)) that "Any person aggrieved by a final order of the (National Labor Relations) Board granting or denying in whole or in part the relief sought may obtain a review of

such order in any Circuit Court of Appeals of the United States * * *". The Rules and Regulations of the National Labor Relations Board, Series 7, provide in Section 102.18 that an unfair labor practice complaint may be withdrawn by a Regional Director of the Board on his own motion. Section 102.19 provides for review and final decision by the General Counsel of the Board of the action of a Regional Director in withdrawing a complaint. In this case an unfair labor practice complaint to which Appellant is the charging party was withdrawn by the Regional Director for the 22nd Region, on the ground that a Settlement Agreement entered into by and between the Regional Director, and the respondent, the Metropolitan Life Insurance Company, provided full relief for the unfair labor practices alleged in the complaint. The Appellant objected to this Settlement Agreement, directing its objections first to the Regional Director and, then, upon appeal, to the General Counsel. Having exhausted the procedures of the National Labor Relations Board, as provided in its Rules and Regulations, the petitioner, as an aggrieved party, sought review by the Court of Appeals of the order of the General Counsel which disposed of the unfair labor practice proceeding by sustaining the Settlement Agreement. The question, therefore, is whether the action of the General Counsel sustaining the Regional Director in withdrawing the unfair practice complaint, and approving of the Settlement Agreement, over the objection of the petitioner as a charging party, is a final order of the National Labor Relations Board, which a Court of Appeals has jurisdiction to review pursuant to Section 10(f) of the National Labor Relations Act?

Is an action of the General Counsel taken pursuant to the Rules and Regulations of the National Labor Relations Board disposing of an unfair labor practice proceeding, a final order of the Board, for the purposes of affording the statutory review to a party claiming to be aggrieved by the order?

Statement

This proceeding arises out of a petition for review filed by the Appellant, Insurance Workers International Union AFL-CIO, in the United States Court of Appeals for the Third Circuit. Appellant, in invoking the jurisdiction of the Court of Appeals relied upon Section 10(f) of the National Labor Relations Act providing for review in the appropriate Court of Appeals upon petition by "Any person aggrieved by a final order of the Board". The petitioner sought in the petition to set aside a final order of the National Labor Relations Board and direct the Board to hold a hearing in an unfair labor practice complaint proceeding to which the petitioner was a party. The proceeding had been instituted by charges filed by the Appellant's predecessor, the Insurance Workers of America AFL-CIO against the Metropolitan Life Insurance Company. A complaint and notice of hearing were issued against the company based on these charges. The unfair labor practice complaint was withdrawn by the Regional Director and the proceeding was settled and disposed, however, without a hearing or findings of fact or law. A Settlement Agreement was entered into between the Regional Director for the 22nd Region of the National Labor Relations Board and the Metropolitan Life Insurance Company.

The Appellant objected to the Settlement Agreement, and sought a review by the General Counsel of the actions of the Regional Director. Appellant asserted that the relief provided for in the Settlement Agreement was inadequate, and demanded a hearing in order to prove the need for and right to other and further relief. The General Counsel sustained the Settlement Agreement and withdrawal of the complaint, and the Appellant having exhausted the administrative procedures filed the petition for review. The actions of the Regional Director and General Counsel in disposing of the unfair labor complaint were taken by them pursuant to the authority delegated to them by the National Labor Relations Board in its Rules and Regulations, Sections 101.9, 102.18 and 102.19.

The Appellant's petition in the Court of Appeals named the National Labor Relations Board as respondent. The Board moved to dismiss the petition solely on the ground that the Court of Appeals lacked jurisdiction.

The Board's motion was granted without opinion by the Court of Appeals, per Mr. Justice Goodrich, and the petition for review was ordered dismissed for lack of jurisdiction.

This matter was initially instituted by the Appellant's predecessor, the Insurance Workers of America, AFL-CIO. The latter union, on October 22, 1958 on behalf of certain employees of the Metropolitan Life Insurance Company whom it represented, filed with the Regional Director for the 22nd Region of the National Labor Relations Board unfair labor practice charges against the Company. The charges alleged

that the Company had interfered with the rights of its employees freely to organize for the purposes of collective bargaining in violation of the provision of the National Labor Relations Act. The case was assigned No. 22-CA-265 and after investigation of the charges an unfair labor practice complaint was issued on March 6, 1959, alleging that the Metropolitan Life Insurance Company had committed unfair labor practices within the meaning of Sections 8(a)(1), 2(6) and (7) of the National Labor Relations Act, as amended. The complaint named as parties thereto, the charging party, the Insurance Workers Union AFL-CIO and the Metropolitan Life Insurance Company as respondent to the charges. The complaint was issued in the name of the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, by the Regional Director for the 22nd Region, and is subscribed by John J. Cuneo, the Regional Director for the National Labor Relations Board, 22nd Region.

Subsequent to the issuance of the complaint, the Regional Director proposed an agreement settling and disposing of the unfair labor practices alleged in the complaint. No hearing was ever held upon the charges alleged in the complaint, nor were any other formal proceedings conducted after the issuance of the complaint. A written Settlement Agreement was presented both to the Metropolitan Life Insurance Company and to the Insurance Workers of America. The Metropiltan Life Insurance Company and the Regional Director both accepted the terms of the agreement and the Metropolitan Life Insurance Company subscribed its approval thereto on April 3, 1959. The Settlement Agreement was recommended on April 6,

1959 by an Examiner for the National Labor Relations Board and on April 7, 1959 was approved in writing by John J. Cuneo, the Regional Director for the 22nd Region of the National Labor Relations Board. The Insurance Workers of America objected to and never accepted at any time the terms and conditions of the Settlement Agreement, insisting at all times that a hearing be held on the charges, that among other things, a hearing would show to the Board that the Settlement Agreement was inadequate and incomplete as a remedy for the unfair labor practices committed by the Company. (See the Petition for Review submitted herewith as part of the proceedings in the Court of Appeals.) By letter dated April 8, 1959 (see Appendix—letter of April 8) however, the Regional Director for the 22nd Region informed the Insurance Workers of America that the Settlement Agreement had been accepted and that the unfair labor practice complaint of March 6, 1959 was withdrawn on April 7, 1959. This communication also advised the Appellant's predecessor that it could appeal the Regional Director's decision by filing a request for a review with the General Counsel of the National Labor Relations Board. Accordingly, such review was sought and on June 17, 1959 (see Appendix—letter of June 17) the office of the General Counsel of the National Labor Relations Board sustained the ruling of the Regional Director, concluding that the Settlement Agreement adequately disposed of the violations alleged in the unfair labor practice complaint and that further proceedings were not warranted.

The petitioner, by this time, had succeeded to the rights and interests of the Insurance Workers of America in the proceeding, and feeling itself aggrieved

by the decisions of the General Counsel and Regional Director, initiated the petition for review in the United States Court of Appeals for the 3rd Circuit, naming the National Labor Relations Board as respondent.

The Board, represented by the office of the General Counsel, moved to dismiss the petition to review "for want of jurisdiction".

The Court of Appeals granted the motion, but without opinion, and without stating any ground for its decision.

However, the Board's arguments in support of its motion are set forth in a memorandum submitted by it to the Court of Appeals. In the memorandum the Board, after setting forth the facts contained herein, argued that the Court of Appeals had jurisdiction under Section 10(f) of the National Labor Relations Act to review only final orders of the National Labor Relations Board, and that the General Counsel's final decision herein sustaining the withdrawal of the complaint and approving the Settlement Agreement was not a final order of the Board, and therefore was not reviewable by the Court of Appeals. The Board argued that a decision of the General Counsel is not a decision of the Board, and that decisions of the General Counsel may not be reviewed under the procedure set forth in Section 10(f). The Board cited, in support of its contention, a series of cases holding that the General Counsel's refusal to issue a complaint is not a final order within the meaning of Section 10(f) and is not reviewable by a Court of Appeals; *Lincourt* vs. *National Labor Relations Board*, 170 F. 2d 306 (C. A. 1), *General Drivers, etc.* vs. *National Labor*

Relations Board, 179 F. 2d 492 (C. A. 10), *Manhattan Construction Company* vs. *National Labor Relations Board*, 198 F. 2d 320 (C. A. 10) and *Anthony* vs. *National Labor Relations Board*, 204 F. 2d 832 (C. A. 6).

The Board also argued in support of its motion, that since the Regional Director had authority to enter into a Settlement Agreement pursuant to Section 5(b) of the Administrative Procedure Act and Section 101.9 of the National Labor Relations Board's Statement of Procedure, and since the Settlement Agreement entered into pursuant to this authority provided the Appellant with full relief from the unfair labor practices charged, that "Hence, even if the Settlement Agreement be viewed as a final order of the Board, this Court lacks jurisdiction to review it in this proceeding, for petitioner is not aggrieved by the order, and has no standing to enforce it." The Board cited in support of this contention two cases holding that a proceeding to enforce an order of the Board is available to the Board alone, *Amalgamated Utility Workers* vs. *Consolidated Edison Co.*, 309 U. S. 261 and *National Labor Relations Board* vs. *Pool Manufacturing Co.*, 339 U. S. 577.

The Appellant rested its argument in opposition to the motion to dismiss upon two cases, *Marine Engineers Beneficial Association* vs. *National Labor Relations Board*, 202 F. 2d 546, Certiorari denied 346 U. S. 819 (C. A. 3) and *International Union of United Aircraft & Agricultural Implement Workers of America, CIO* vs. *National Labor Relations Board*, 231 F. 2d 237 (C. A. 7).

In each of these cases, the respective Courts of Appeal held that a charging party who objects to a

Settlement Agreement entered into between the Board and a respondent charged with unfair labor practices is a party aggrieved by a final order within the meaning of Section 10(f) and is entitled to review. The Courts also held that a charging party who objects to a Settlement Agreement entered into by the Board after the issuance of a complaint is entitled to a hearing upon the complaint.

In both cases the Settlement Agreements had been entered into after the complaint was issued but before any hearing. These cases were urged by the Appellant to be clear precedents establishing jurisdiction in the Court of Appeals to review a Settlement Agreement which disposes of an unfair labor practice proceeding after a complaint has been issued. The only distinction between the facts of the cases cited by the Appellant and those cited by the Board is the circumstance that in the *Maritime Engineers Association* case the Board itself approved the stipulation or Settlement Agreement, whereas in the instant case the Settlement Agreement was entered into and approved by agents of the Board to whom the Board had delegated by its Rules and Regulations, the authority to settle and dispose of an unfair labor practice proceeding after a complaint had been issued.

It was urged by the Appellant that the Board cannot confer immunity from review upon its agent for an act, which, if done by the Board, would have been subject to review under Section 10(f).

The Court dismissed this petition solely for lack of jurisdiction. Presumably the Court of Appeals sustained the Board's contention that the order of the General Counsel was not an order of the Board.

Certainly it has been established beyond doubt that the charging party is an aggrieved party and may appeal from an order of the Board dismissing a complaint, *Joliet Contractors Association* vs. *National Labor Relations Board*, 193 F. 2d 833 (C. A. 7), and may appeal from an order granting relief to other charging parties but not to him, *Albrecht* vs. *National Labor Relations Board*, 181 F. 2d 652 (C. A. 7). Likewise it has been held in the *Marine Engineers Association* case that the charging party may appeal from the disposition of a complaint through a Settlement Agreement approved by the Board. The cases relating to Board enforcement of an order cited by the Board have nothing to do with a charging party's right to appeal from the scope and provisions of an order. It may be that the Board's argument to the effect that the Appellant is not an aggrieved party rests upon its assertion that full relief was afforded the Appellant by the terms of the Settlement Agreement approved by the General Counsel. However valid this argument may prove to be after hearing and consideration by the Court of Appeals, it is an argument on the merits and not an argument addressed to the jurisdiction of the Court to entertain the petition for review. The Board's argument, that the Appellant is not an aggrieved party rests not upon any statutory provision or interpretation of any statute, but solely upon the characterization by the respondent that it afforded the Appellant full relief. Such an argument begs the question of the jurisdiction of the Court of Appeals to entertain the proceeding.

The cases cited by the Board to the effect that the General Counsel's refusal to issue an unfair labor

practice complaint may not be reviewed by a Court of Appeals pursuant to Section 10(f) are irrelevant to this proceeding. Those cases are based upon Section 3(d) of the National Labor Relations Act which gives to the General Counsel final authority on behalf of the Board to issue a complaint. There, a specific statutory provision grants to the General Counsel final authority with respect to the issuance of a complaint, and the Courts have held only that the General Counsel's refusal to issue a complaint is not a final order of the Board. The instant case deals with the powers and authority of the Board and its agents once a complaint is issued. The action of the General Counsel herein was taken pursuant to authority delegated to it by the Board in its Rules and Regulations, and not by statute. The effect of the General Counsel's decision in the instant case is to dispose, not of an unfair labor practice charge, but of an unfair labor practice complaint. In the present case the action of the General Counsel terminated a proceeding, finally and decisively, whereas in the cases cited by the Board the General Counsel has simply refused, pursuant to a statutory authority, to initiate a proceeding. The Court in the *Marine Engineers' Association* case defined the rights of the charging party in the following language:

> "* * * Granted that no one has authority to compel the Labor Board to issue a complaint against a party accused of violating the statute (and note that that may be an employee charge or an employer charge under the present law), what is the situation if the Board does issue a complaint?
>
> "We think there is quite a little though not overwhelming, proof of the correctness of the peti-

tioner's position in the practice of the Board itself. Its rules and regulations permit the charging party to be listed as a party to the proceedings from the outset, instead of relegating him to intervention (rules and regulations Section 102.8). He is a party aggrieved under Section 10 of the statute and as the Edison (Amalgamated Utility Workers vs. Consolidated Edison Co., 309 U. S. 261) opinion says 'may contest' the correctness of the Board's order * * *

"Our best judgment is that the charging party, after complaint is issued, does have some standing. The Board may refuse to do anything about his complaint as already indicated. But once it does, and once it goes to the extent of filing a complaint, then we think that he is entitled to have a chance to be heard as the Administrative Procedure Act requires. He has a right to object if after hearing he does not like the result. But he certainly has nothing on which to based his objections unless there is a hearing and a record is made so that the court has something to go on.

"In other words, we conclude that the petitioners are right in this case; that they are entitled to a hearing to present whatever facts they can find to support their position. And if they believe the Board to be wrong after it makes an order they can get court review both on the questions of fact and on the questions of law." * * *

The Board in this case has successfully contended that the Court below could acquire jurisdiction to grant a charging party the right to a hearing after the issuance of a complaint only if the Board itself

made an order denying that right (as in the *Marine Engineers* case) but that the right to a hearing was lost to the charging party if the General Counsel made the order, despite the fact that the General Counsel made the order as the agent of the Labor Board.

The Question Presented is Substantial

This proceeding raises a substantial question concerning the extent to which an agency created by a Federal statute may delegate its authority, and the effect of the delegation of such authority. The Board, in its argument before the Court of Appeals sought not to overrule the *Marine Engineers* case, but to distinguish it. The distinction was based upon the fact that the Settlement Agreement in the instant case was not entered into by the Board, but by the General Counsel. The Board referred to its own Rules and Regulations to support this procedure. These Rules and Regulations are issued by the Board pursuant to Section 6 of the National Labor Relations Act (29 U. S. C. 156), wherein it is provided that "The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such Rules and Regulations as may be necessary to carry out the provisions of this Act".

Pursuant to this provision, the Board has delegated to the Regional Director the authority to withdraw a complaint, once issued (Section 102.18), and the authority to approve Settlement Agreements after the issuance of a complaint (Section 101.9). The Board's practice, through its agent the Regional Director, has been to subject all such Settlement Agreements and

all such withdrawals of complaints to a final review by the Office of the General Counsel (Section 102.19, and see also Appendix (letter of June 17)). The net effect of this procedure is to delegate to the Regional Director and to the General Counsel the Board's authority to remedy unfair labor practices. Having so delegated its authority, the Board now claims that the designated agent is immune from review, for lack of jurisdiction of the Court of Appeals. This circumstance it claims comes about because the review provision of the National Labor Relations Act, Section 10(f) provides for review only from an order of the Board. The Board contends an order of the General Counsel is not an order of the Board.

The Board has, through its Rules and Regulations, therefore, sought to grant immunity from review for an act by its agent, which, it concedes, if done by itself, would be subject to review. Such practice raises a substantial question and of Federal Administrative Procedure. The Congress, in the National Labor Relations Act, and in the Administrative Procedure Act (Sections 5(b) and 6(a), 5 U. S. C. 1004(b), 1004(a)), has sought to provide parties to agency proceedings with the right to a hearing, to notice, to review of agency actions, and an entire series of procedures calculated to insure full and complete disposition of any controversy, after a full hearing, and with opportunity for review. The conduct of the National Labor Relations Board, in this proceeding, if sustained, would effectively negate the Congressional intent and purposes of the Act in a substantial number of cases.

No question is raised concerning the Board's power to seek an amicable disposition of a complaint without

a hearing and through a Settlement Agreement by all parties to a proceeding. The question is whether the action of the Board in disposing of the complaint over the objection of a party is subject to review.

The question presented by the Appellant is phrased in terms of asking this Court whether the action of the General Counsel herein was not, in fact, a final order of the Board. The question rests upon the simple notion that a principal cannot claim immunity from an act of its agent, performed within the scope of the agent's specific power to act.

Assuming that the action of the General Counsel taken solely in his representative capacity on behalf of the Board is a final order, the decision in this proceeding is then in conflict with the *Marine Engineers* case and the *Automobile Workers* case cited above.

The validity of the Rules and Regulations providing for the Settlement Agreement procedures and the withdrawal of a complaint have never been decided by this Court. It is a question of great practical concern in the field of labor-management relations whether the Board can, summarily, and over the objection of a charging party, dispose of an unfair labor practice complaint proceeding on terms satisfactory to the Board's agents but not to the charging party. Before a complaint is issued by the Board its agents have conducted extensive investigations into the facts and circumstances surrounding the charges and, at the very least, the issuance of a complaint must stand as an expression of the Board's opinion that it feels the Labor Relations Act to have been violated. Under such circumstances it would seem that a charging party should be entitled to having a record made upon which it can appeal for

review if it feels that it has not obtained all of the relief to which it is entitled. It is, indeed, established law that a charging party may appeal from the dismissal of a complaint, and may appeal from an order granting relief to other charging parties but not to him (see the *Joliet Contractors* and *Albrecht* cases cited above).

It may be fairly stated that any action by the Board with respect to a complaint is subject to review under Section 10(f). It would be anomalous to permit the Board, by acting through its agent to avoid the statute and the cases. The instant case is just such an attempt at avoidance and presents, therefore, a question of substantial Federal importance.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

IRVING ABRAMSON
Counsel for Appellant-Petitioner

APPENDIX

Decision of Court of Appeals, Third Circuit, January 19, 1960

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,088

INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Present: GOODRICH, McLAUGHLIN and KALODNER,
Circuit Judges.

Upon consideration of the motion by respondent in the above case to dismiss the petition for review, and of the memoranda in support of and in opposition to the motion, and after hearing;

It is ORDERED that the petition for review be, and it is hereby dismissed for lack of jurisdiction.

By the Court,

GOODRICH
Circuit Judge

January 19, 1960

Decision of National Labor Relations Board, April 8, 1959

EXHIBIT II

(Seal)

NATIONAL LABOR RELATIONS BOARD
TWENTY-SECOND REGION
614 National Newark Building,
744 Broad Street
Newark 2, New Jersey

Telephone MArket 4-6151

April 8, 1959

Insurance Workers of America, AFL-CIO
1017—12th Street, N.W.
Washington 5, D. C.

Re: Metropolitan Life Insurance Co.
Case No. 22-CA-265

Gentlemen:

The above captioned case charging a violation under Section 8 of the National Labor Relations Act has been carefully investigated and a complaint issued on March 6, 1959.

Pursuant to the terms of the attached Informal Settlement Agreement said complaint was withdrawn on April 7, 1959. It appears that the policies of the Act will not be effectuated by the issuance of a new complaint. I am therefore refusing to issue a new complaint in this matter.

Pursuant to the National Labor Relations Board's Rules and Regulations (Section 102.19) you may obtain a review of this action by filing a request for

such review with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth facts and reasons upon which it is based. The request should be filed within ten (10) days from the date of receipt of this letter except that the General Counsel may upon good cause shown grant special permission for a longer period within which to file.

Very truly yours,

JOHN J. CUNEO,

John J. Cuneo
Regional Director

Attachment

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: General Counsel
National Labor Relations Board
Washington 25, D. C.

Metropolitan Life Insurance Co.
1 Madison Avenue
New York, N. Y.
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York 22, N. Y.
Attn: Howard Lichtenstein, Esq.

Irving Abramson, Esq.
19 W. 44th Street
New York 36, N. Y.
Attn: Melvin Washaw, Esq.

RDT:ab

Decision of National Labor Relations Board, June 17, 1959

EXHIBIT II

(Seal)

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington 25, D. C.

June 17, 1959

Melvin Warshaw, Esquire
19 West 44th Street
New York 36, New York

Re: Metropolitan Life Insurance Co.
Case No. 22-CA-265

Dear Mr. Warshaw:

Your appeal from the Regional Director's refusal to issue complaint in the above case, charging violations under Section 8 of the National Labor Relations Act, has been duly considered by the General Counsel.

The General Counsel sustains the ruling of the Regional Director. The General Counsel concludes that the settlement agreement adequately disposes of

the alleged violations. Accordingly, further proceedings are not warranted.

Very truly yours,

THOMAS J. RYAN

Thomas J. Ryan
Special Assistant to the
General Counsel

cc: Director, 22nd Region
Insurance Workers of America, AFL-CIO,
1017—12th St., N. W., Washington 5, D. C.

Metropolitan Life Insurance Co., 1 Madison Ave., New York, N. Y.

Proskauer, Ross, Goetz & Mendelsohn,
300 Park Ave., New York 22, N. Y.,
Attn: Howard Lichtenstein, Esq.

CERTIFIED MAIL

SEC. 5.

(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives.

Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

National Labor Relations Act

"SEC. 3 . . . (d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor

practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * *"

National Labor Relations Board Rules and Regulations

SEC. 102.8 *Party.* The term "party" as used herein shall mean the regional director in whose region the proceeding is pending and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the act, any person named as respondent, as employer, or as party to a contract in any proceeding under the act, and any labor organization alleged to be dominated, assisted, or supported in violation of section 8(a)(1) or

8 (a) (2) of the act; but nothing herein shall be construed to prevent the Board or its designated agent from limiting any party to participate in the proceedings to the extent of his interest only.

COMPLAINT

SEC. 102.15 *When and by whom issued; contents; service.*—After a charge has been filed, if it appears to the regional director that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served upon all the other parties a formal complaint in the name of the Board stating the unfair labor practices and containing a notice of hearing before a trial examiner at a place therein fixed and at a time not less than 10 days after the service of the complaint.

SEC. 102.18 *Withdrawal.*—Any such complaint may be withdrawn before the hearing by the regional director on his own motion.

SEC. 102.19 *Review by the general counsel of refusal to issue.*—If, after the charge has been filed, the regional director declines to issue a complaint, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds. The person making the charge may obtain a review of such action by filing a request therefor with the general counsel in Washington, D. C., and filing a copy of the request with the regional director, within 10 days from the service of the notice of such refusal by the regional director. The request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

National Labor Relations Board Statements of Procedure

SEC. 101.9 *Settlement after issuance of complaint.*—*(a)* Even though formal proceedings have begun, the parties again have full opportunity at every stage to dispose of the case by amicable adjustment and in compliance with the law. Thus, after the complaint has been issued and a hearing scheduled or even begun, the attorney in charge of the case and the regional director afford all parties every opportunity for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit.

(b) All settlement stipulations which provide for the entry of an order by the Board are subject to the approval of the Board in Washington, D. C. If the settlement provides for the entry of an order by the Board, the parties agree to wave their right to hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the adjustment. Usually the settlement stipulation also contains the respondent's consent to the Board's application for the entry of a decree by the appropriate circuit court of appeals enforcing the Board's order.

(c) In the event the respondent fails to comply with the terms of a settlement stipulation, upon which a Board order and court decree are based, the Board may petition that court to adjudge the respondent in contempt. If the respondent refuses to comply with the terms of a stipulation settlement providing solely for the entry of a Board order, the Board may petition the court for enforcement of its order, pursuant to section 10 of the National Labor Relations Act.